IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4570 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT & 1 - Petitioner(s)
Versus
BHAVESHVAR MAHADEV MANDIR - Respondent(s)

==========

Appearance :
GMR AY KOGJE AGP for Petitioner(s) : 1 - 2.
MR CH VORA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/01/2007

ORAL JUDGMENT

1. Shri A.Y. Kogje, learned A.G.P. for the petitioner State and Shri C.H. Vora, learned counsel for the respondent.

2. By this this writ application, which according to the judgment of the learned Single Judge of this Court, in the matter of State of Gujarat Vs. Polabhai Ajabhai, reported in 2003 (1) G.L.R. 887, would be a petition under Article 227 of the Constitution of India, the petitioner – State seeks to challenge the correctness, validity and propriety of the judgment passed by the Gujarat Revenue Tribunal in Appeal No.Ten.-AK-8/93, Bhuj (decided on 6/9/1994) and also challenges the findings recorded by the said tribunal.

3. Short facts necessary for the disposal of the petition are that the respondent Trust, being aggrieved by the City Survey made in the year 1974, made an application the Deputy Collector for inclusion of the some more land into their ownership. The Deputy Collector forwarded the said application to the City Survey Superintendent for making an inquiry under sec.37(2) of the Bombay Land Revenue Code ("the Code" for short). The City Survey Superintendent made an inquiry under sec.37(2) of the Code, the parties were allowed to file documents and lead oral evidence. After hearing the parties and considering the totality of the evidence, the City Survey Superintendent observed that not only the land bearing Survey No.3394 admeasuring 1261.70 sq.mtrs. belonged to the respondent but the land admeasuring 9258.23 sq.mtrs. did belong to and owned by

the respondent Trust. He passed his final order on 11/1/1988 holding that the respondent herein was an owner of the land in dispute.

4. The matter was taken up in suo-motu revision by the Deputy Collector in Case No.6 of 1988 who ultimately held that the land admeasuring 9258.23 sq.mtrs, did not belong to the respondent Trust.

5. Being aggrieved by the order passed by the Deputy Collector, the respondent preferred Appeal No.31 of 1990 in the court of Collector, who by his judgment and order dtd.21/5/1990 allowed the appeal, set aside the order passed by the Deputy Collector and remanded the matter to the Deputy Collector for making an inquiry under sec.37(2) of the Code.

6. In accordance with the remand order, the Deputy Collector issued notice under sec.37(2) of the Code and required the parties to file their statement of case. The respondent filed his written statements along with various affidavits and documents. The State also examined various authorities and produced certain documents. The matter was ultimately decided against the interest of the respondent Trust. In Appeal No.88 of 1992, the Collector, Kutch vide his judgment and order dtd.21/11/1992 dismissed the appeal. Being

aggrieved by the said judgment and order, the respondent Trust filed Appeal No.Ten-AK-8/93, Bhuj, which was allowed by order dtd.6/9/1994, therefore, the State is before this Court.

7. Shri A.Y. Kogje, learned A.G.P. for the petitioner State submits that the application filed by the respondent Trust for resurvey was not maintainable in view of the first order of survey. He submits that if second survey was not permissible, then, the proceedings would become without jurisdiction and no relief can be granted in favour of the respondent Trust.

8. Mr.Vora, learned counsel for the respondent Trust on the other hand, submitted that the argument is misconceived, because, this question was never raised before the authorities. Yet in any case, the moment the application was allowed and the City Survey Superintendent was required to resurvey the land, it would simply mean that the first survey stood nullified. The last of his argument is that if the Collector in Appeal Case No.31 of 1990 directed the Deputy Collector to hold an inquiry under sec.37(2) of the Code, then, filing of the application by the respondent would become immaterial, because, the Deputy Collector was obliged to make an inquiry under sec.37(2) of the Code. His further submission is that the findings recorded by the Tribunal, are

findings of facts and in any case, in view of sec.37(3) of the Code, the petitioner - State would be entitled to challenge the order passed by the Gujarat Revenue Tribunal before the competent Civil Court. In support of his last contention, he places reliance upon a Single Bench Judgment of this Court in the case of State of Gujarat Vs. Polabhai Ajabhai (supra).

9. It is well settled that in a matter under Article 226 or 227, the High Court would not sit as a court of appeal, the High Court would only examine that whether the process or procedure adopted by the authority was proper or not. On the strength of the evidence, what particular finding is to be recorded, would be within the domain of subordinate authority, the High Court would not interfere in the matter, unless it is shown to the High Court that the findings are perverse or are such which perilously border perversity. In a case where another view is possible, the High Court would not be entitled to interfere.

10. After going through the findings recorded by the subordinate authorities, I am unable to hold that any interference under Article 227 of the Constitution of India is called for. However, the State would still be entitled to challenge the impugned order passed by the Gujarat Revenue Tribunal before the competent Civil Court as provided under sec.37(3) of the

Code. It is also clarified that the State would be entitled to take appropriate proceedings for challenging the impugned order and appropriate steps for bringing the matter within the period of limitation, they would be entitled to take shelter under secs.5 and 14 of the Indian Limitation Act or sec.37(3) of the Code. It is also clarified that the observations made by the Gujarat Revenue Tribunal or by this Court shall not come in the way of the Civil Court in a suit which may now be filed under sec.37 of the Code challenging the findings recorded by the Gujarat Revenue Tribunal. The petition is accordingly dismissed with the liberty and observations aforesaid. Interim relief granted earlier stands vacated. No costs.

(R.S. GARG, J.)

rafik